

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

STERLING SAVINGS BANK,
Plaintiff,

v.

GARY DILLEY, an unmarried
individual,
Defendant.

NO. CV-04-0321-LRS

ORDER OF DISMISSAL

BEFORE THE COURT is interested third-party Robin Kisse's Renewed Motion to Dismiss for Lack of Jurisdiction (Ct. Rec. 53). On May 12, 2005, the Court heard argument on this motion. Mr. Robert P. Hailey participated on behalf of the movant, and Mr. Richard J. Stone participated on behalf of the Plaintiff. This Order is entered to memorialize and supplement the oral rulings of the Court.

In addition to the oral findings made by the Court on the record at the time of the hearing, the Court also finds as follows: Diversity jurisdiction is determined by examining the citizenship of the parties at the time the action is commenced: the Complaint was filed August 27, 2004 and the Amended Complaint was filed on September 3, 2004. Nearly all of the documents included in Exhibit 9 attached to the Declaration of Richard J. Stone filed March 31,

2005, are from a time period months before the complaint was filed. It is undisputed that prior to August 12, 2004, the Defendant had represented his residence was located in Verdale, Washington. At no time in this litigation has any litigant contended that prior to August 12, 2004, the Defendant was a resident of Idaho, though he did own a car dealership in Idaho. The attachments to Exhibit 9 serve only to only confirm Defendant's Verdale address and his Post Falls business address. They do not serve as any evidence of an Idaho residence or domicile at the time this lawsuit commenced.

Accordingly, the Court finds the Plaintiffs have failed to meet their burden of proving complete diversity of citizenship.

1. Robin Kisse's Renewed Motion to Dismiss for Lack of Subject Matter Jurisdiction (Ct. Rec. 53) is **GRANTED**.

2. The Complaint is **DISMISSED** without prejudice.

3. The District Court executive is directed to enter this order, provide copies to all parties and counsel for the movant, Robert P. Hailey, and **CLOSE THE FILE**.

IT IS SO ORDERED.

DATED this 13th day of May, 2005.

s/Lonny R. Suko

LONNY R. SUKO
United States District Court Judge